IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 23940 of 2006(Y)

PETITIONER:

M/S.OLGA CONSTRUCTIONS,
DESIGNERS & CONTRACTORS, GRP BUILDINGS,
MANACAUD, THIRUVANANTHAPURAM -09,
REPRESENTED BY ITS MANAGING PARTNER,
K.V.GOPAKUMAR.

BY ADV. SRI.AJITH KRISHNAN

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. SECRETARY,
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

3. THE SECRETARY,
PUBLIC WORKS DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

4. CHIEF ENGINEER,
PWD (BUILDING SECTION),
THIRUVANANTHAPURAM.

5. THE SUPERINTENDING ENGINEER,
BUILDINGS & LOCAL WORKS, SOUTH CIRCLE,
THIRUVANANTHAPURAM.

6. EXECUTIVE ENGINEER,
BUILDING SECTION, PWD, PATHANAMTHITTA DISTRICT.

7. ASSISTANT EXECUTIVE ENGINEER,
BUILDING SUB DIVISION, PWD, CIVIL STATION,
PATHANAMTHITTA DISTRICT.

BY G.P. SMT.BINDU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/01/2007, ALONG WITH WPC NO. 31663 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COCPY OF THE LETTER DT.30..7.04 ALONG WITH ANNEXURES THEREI.

P2: TRUE OCPY OF THE LAWYER NOTICE ISSUED BY PETITIONER TO RESPONDENTS 4 TO 6.

P3: TRUE COPY OF LETTER OF CREDIT ISSUED BY THE FINANCE DEPARTMENT, TVPM

P5: TRUE COPY OF THE REPRESENTATION DT.5.2.06 BEFORE R5.

P6: TRUE COPY OF THE JUDGMENT DT.22.3.06 IN WPC NO.7324/06 PASSED BY THIS HON'BLE COURT.

P7:TRUEOCPY OF THE ORDER DT.31.7.2006 ISSUED BY R5.

P8: TRUE COPY OF THE ORDER DT.7.8.2006 ISSUED BY R5.

P9: TRUE COPY OF G.O. DATED 15.6.2005 ISSUED BY THE GOVT. OF KERALA.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) Nos.23940 & 31663 of 2006

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Dated this the 24th day of January, 2007.

JUDGMENT

The petitioner signed a contract with PWD Building Division on 20.3.2003 for construction of office building for the Police Superintendent at Pathanamthitta. The contract is taken at 8.5% below the estimated rate. Even though petitioner carried out first stage of the work and collected Rs.37 lakhs, petitioner abandoned the work thereafter. The contract provided for completion of work within two years from signing of the contract. The respondents have vide Ext.P11 produced in W.P. 31663/2006 cancelled the contract and have taken steps to rearrange the work at the risk and cost of the petitioner in terms of the tender conditions. Even though petitioner raised a contention that there was delay in handing over site, the same does not stand substantiated. Moreover, it is conceded that part of the work is done by the petitioner and has collected consideration for the same. The further claim of the petitioner is escalation of rates which is admittedly not provided in the contract. Even though counsel contended that in similar cases rates are increased, I do not think petitioner is entitled to the relief because terms of contract are covered by tender conditions incorporated in

written agreement which does not provide for escalation clause. I am of the view that the cost of building materials is rather steady for several years and in fact there is decline in the cost of many building materials on account of liberalisation in import policy. In the circumstances, if escalation was granted to contractors in other cases without any provision in the agreement, it is a matter for investigation by Department in such cases and not a ground for repeating wrong things. The W.Ps. are therefore devoid of any merit and are dismissed. However, if work is not rearranged, I feel petitioner can be given one more opportunity i.e. after collecting fresh security from the petitioner to ensure that work is executed within a reasonable time to be fixed by the Superintending Engineer without any provision for escalation.

C.N.RAMACHANDRAN NAIR
Judge

pms